

PENNSYLVANIA NATIONAL MUTUAL
CASUALTY INSURANCE COMPANY,

Plaintiff,

V.

GRASSROOTS ASSOCIATES, INC.
d/b/a KIA OF GASTONIA,

Defendant.

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Case No. 3:20-cv-00240-MOC-DSC

**PLAINTIFF PENNSYLVANIA NATIONAL MUTUAL
CASUALTY INSURANCE COMPANY'S
MOTION FOR SUMMARY JUDGMENT**

COMES NOW Plaintiff Pennsylvania National Mutual Casualty Insurance Company (“Penn National”) by and through counsel, and pursuant to Rule 56 of the Federal Rules of Civil Procedure, moves this Court for Summary Judgment in its favor on all issues. Specifically, Penn National requests a declaration that it has no duty to defend and no duty to indemnify Defendant Grassroots Associates, Inc. d/b/a Kia of Gastonia (“Kia of Gastonia”) under a garage policy and a commercial umbrella liability policy issued by Penn National in connection with the Underlying Lawsuits, entitled:

1. *“Joyce Price Parks v. Grassroots Associates, Inc. d/b/a Kia of Gastonia, Integrity Automotive Promotions LLC, Hyundai Capital America, Inc., and PNC Bank, National Association,”* File No. 19-CvS-4020, filed in Gaston County Superior Court;
2. *“Penny G. Welch v. Grassroots Associates, Inc. d/b/a Kia of Gastonia, Integrity Automotive Promotions, LLC, and PNC Bank, National Association,”* Civil Action No. 19-CvS-4015, filed in Gaston County Superior Court;
3. *“Peggy Darlene Ensley and Donnie Candler Ensley v. Grassroots Associates, Inc. d/b/a Kia of Gastonia, Integrity Automotive Promotions, LLC, and Citizens Bank, National Association,”* Civil Action No. 19-CvS-4503, filed in Gaston County Superior Court;

4. *“Donald Gene Bradshaw v. Grassroots Associates, Inc. d/b/a Kia of Gastonia, Integrity Automotive Promotions, LLC, and Hyundai Capital America, Inc.,”* Civil Action No. 19-CvS-4785, filed in Gaston County Superior Court;
5. *“Baxter Lee Hansen v. Grassroots Associates, Inc. d/b/a Kia of Gastonia, and Integrity Automotive Promotions, LLC,”* Civil Action No. 19-CvS-5080, filed in Gaston County Superior Court;
6. *“Sheridan Provost v. Grassroots Associates, Inc. d/b/a Kia of Gastonia, Integrity Automotive Promotions, LLC, and Brian Leachman,”* Civil Action No. 20-CvS-1667, filed in Gaston County Superior Court;
7. *“Brenden Scott Sica v. Grassroots Associates, Inc. d/b/a Kia of Gastonia, Integrity Automotive Promotions, LLC, and Brian Leachman,”* Civil Action No. 20-CvS-1149, filed in Gaston County Superior Court;
8. *“Danny D. Owens, II and Brenda A. Owens v. Grassroots Associates, Inc. d/b/a Kia of Gastonia, Integrity Automotive Promotions, LLC, and Brian Leachman,”* Civil Action No. 20-CvS-1536, filed in Gaston County Superior Court;
9. *“Bruce Kevin Holt v. Grassroots Associates, Inc. d/b/a Kia of Gastonia, Integrity Automotive Promotions, LLC, and Brian Leachman,”* Civil Action No. 20-CvS-2368, filed in Gaston County Superior Court;
10. *“Kathy Elaine Allen v. Grassroots Associates, Inc. d/b/a Kia of Gastonia, Integrity Automotive Promotions, LLC, and Brian Leachman,”* Civil Action No. 20-CvS-2371, filed in Gaston County Superior Court; and
11. *“Rutha Mae Atkinson v. Grassroots Associates, Inc. d/b/a Kia of Gastonia, Integrity Automotive Promotions, LLC, and Brian Leachman,”* Civil Action No. 20-CvS-2369, filed in Gaston County Superior Court.

Penn National is entitled to judgment as a matter of law on all issues on the grounds that the undisputed facts and the law show that the allegations made, claims asserted and damages sought in the complaints and amended complaints filed in the Underlying Lawsuits do not fall within the coverage provided by the policies of insurance issued by Penn National. Specifically:

1. The allegations made and damages sought in the Underlying Lawsuits do not constitute “bodily injury” or “property damage” as those terms are defined by the Penn National Policies.

2. Even if the damages sought in the Underlying Lawsuits could, somehow, fall within the definitions of “bodily injury” or “property damage,” which Penn National disputes, there are no allegations that these damages were caused by an “accident” as is required for coverage under the Penn National Policies.
3. The claims asserted in the Underlying Lawsuits do not fall within any of the errors and omissions coverages provided by the “Extended Garage Coverage – Auto Dealers” endorsement contained in the garage policy issued by Penn National.
4. Even if the claims asserted in the Underlying Lawsuits fell within the errors and omissions coverage provided by the garage policy, which Penn National disputes, the “dishonest, fraudulent, ... or intentional acts” exclusion contained in the “Extended Garage Coverage – Auto Dealers” endorsement precludes any such coverage.
5. The Underlying Lawsuits do not allege an enumerated offense listed in the Penn National Policies’ definition of “personal injury;” and
5. There is otherwise no coverage for the Underlying Lawsuits under the Penn National Policies.

Accordingly, Penn National has no coverage for, and no corresponding defense obligation to, Kia of Gastonia for the events alleged in the Underlying Lawsuits.

In support of this motion, Penn National relies on the copies of the complaints and amended complaints filed in the Underlying Lawsuits attached to the Complaint filed in this case as well as the Answer filed by Defendant Kia of Gastonia, copies of the two policies of insurance issued by Penn National to Kia of Gastonia attached to the Complaint, the Affidavit of David L.

Brown filed contemporaneously herewith, and all other matters of record. In further support of its motion, Penn National relies on its Memorandum in Support of its Motion for Summary Judgment, filed contemporaneously herewith.

WHEREFORE, Plaintiff Pennsylvania National Mutual Casualty Insurance Company respectfully requests that this Court grant its Motion for Summary Judgment on all claims and declare that (1) Defendant Kia of Gastonia does not have coverage under the policies of insurance issued by Penn National to Kia of Gastonia for the Underlying Lawsuits, and (2) Penn National has no duty to defend and no duty to indemnify Kia of Gastonia in the Underlying Lawsuits.

Respectfully submitted, this the 1st day of July, 2021.

GOLDBERG SEGALLA LLP

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CERTIFICATE OF SERVICE

I hereby certify that on this date, a copy of the foregoing **PLAINTIFF PENNSYLVANIA NATIONAL MUTUAL CASUALTY INSURANCE COMPANY'S MOTION FOR SUMMARY JUDGMENT** was filed with the Clerk of Court using the CM/ECF system. Notice of this filing will be sent by operation of the Court's CM/ECF system to all parties indicated on the electronic filing receipt. Parties may access this filing through the Court's system.

This the 1st day of July, 2021.

GOLDBERG SEGALLA LLP

/s/ David L. Brown _____

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